

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STACEY SMITH,

Plaintiff,

V.

CIVIL ACTION NO.

AMAZON.COM.KYDC LLC,

Defendant.

INDEX OF DOCUMENTS FILED WITH DEFENDANT'S NOTICE OF REMOVAL

Exhibit A Plaintiff's Original Petition
(filed September 28, 2018)

Exhibit B Citation re Amazon DFW 9
(issued October 1, 2018)

Exhibit C Officer's Return re Amazon DFW 9
(filed October 12, 2018)

Exhibit D Defendants' Original Answer
(filed November 1, 2018)

Exhibit E State Court Docket Sheet

Dated: November 2, 2018

Respectfully submitted,

s/ Paulo B. McKeeby

Paulo B. McKeeby
TX State Bar No. 00784571
Aimee M. Raimer
TX State Bar No. 24081275
MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, TX 75201
Tel: 214-466-4000
Fax: 214-466-4001
paulo.mckeeby@morganlewis.com
aimee.raimer@morganlewis.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served upon all counsel of record via the Court's CM/ECF System on this 2nd day of November, 2018, as follows:

W.D. Masterson
Kilgore & Kilgore, PLLC
3109 Carlisle Street, Suite 200
Dallas, TX 75204-2471
wdm@kilgorelaw.com

s/ Paulo B. McKeeby

Paulo B. McKeeby

1-CIT ES

Marissa Pittman

NO. DC-18-14781

STACEY SMITH,

Plaintiff,

v.

AMAZON DFW 9

Defendant.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

B-44TH JUDICIAL DISTRICT

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Stacey Smith ("Plaintiff" or "Smith"), complains of Defendant Amazon DFW 9, a Washington Corporation, sometimes hereafter referred to as ("Defendant" or "Amazon"). For causes of action Plaintiff shows the Court as follows:

I.

CASE LEVEL

1.01 Discovery is intended to be conducted under Level 2 of T.R.C.P. 190.

II.

PARTIES

2.01 Plaintiff is an individual who can be contacted in care of his undersigned counsel. The last three numbers of the Plaintiff's social security number are: 104.

2.02 Defendant Amazon DFW9 is a Washington corporation qualified to transact business in the State of Texas. Defendant may be served by delivery of process to its Registered Agent, Corporation Service Company dba CSC, 211 E. 7th Street, Suite 620, Austin, Texas

78701.

III.

RELIEF AND JURISDICTION

3.01 Pursuant to T.R.C.P. 47 Plaintiff states that Plaintiff seeks monetary relief over \$200,000 but less than \$1,000,000. The damages sought are within the jurisdictional limits of this Court. The maximum amount claimed by Plaintiff at this time is \$1,000,000.

3.02 On or about January 4, 2018 Plaintiff filed a charge alleging race discrimination, retaliation and hostile work environment with the EEOC and Texas Workforce Commission. More than 180 days have passed since Plaintiff filed his original charge and this Court has jurisdiction over the allegations and causes of action raised in this complaint. The Texas Workforce Commission within the past sixty (60) days preceding filing this lawsuit, issued a Notice of Right to File a Civil Action, a copy of which is attached as **Exhibit A** hereto and is incorporated herein by reference.

IV.

REQUEST FOR DISCLOSURE

4.01 Pursuant to Rule 194, Amazon DFW9. is requested to disclose, within fifty (50) days of service in this Petition and Request for Disclosure, the information or material described in Rule 194(a)-(l) in the Texas Rules of Civil Procedure.

V.

BACKGROUND FACTS

5.01 Plaintiff began working for Defendant on or about September 13, 2017. Plaintiff was employed by Defendant as a Pantry Associate. Plaintiff was paid a base salary of \$12.75 per

hour.

5.02 Plaintiff is a 40 year old African American Male.

5.03 Plaintiff's supervisor was Eric.

5.04 Plaintiff did a very good job and was a good producer at Defendant.

5.05 The first incident was in October when Jason confronted Plaintiff because he thought Plaintiff said his name. Plaintiff told him Plaintiff didn't know him and never talked about him. He said ok and walked away. I left it alone because I thought it was mistaken identity. Plaintiff did not tell his supervisor, Eric.

5.06 The next incident was at 11:15 on November 3, 2017, Jason approached Plaintiff during Plaintiff's lunch. Plaintiff was sitting at the table eating with other coworkers. Jason came into the break room and in a loud tone called Plaintiff's name. Jason said I heard you had something to say to me and if you have something to say we can handle this now.

5.07 Plaintiff was shocked and confused because it this came out of nowhere. Plaintiff had never talked to Jason let alone mentioned his name. Plaintiff didn't know what Jason was talking about.

5.08 Plaintiff felt threatened because at this time Jason stood over Plaintiff and as he spoke spit was landing in Plaintiff's food.

5.09 Plaintiff stood up, threw his food out, washed his hands and came back towards Jason and told him we do not need to discuss this in here any further we can take this outside. Plaintiff's peers told him no Stacey, just go to the boss and that's when Plaintiff cooled down and decided they were right.

5.10 Plaintiff went to find Eric his boss and when he finally found him, Jason was already talking to him. Plaintiff overheard some of the conversation. In particular Jason said to Eric "Hey man you know we are family." Eric saw me and said to Jason let me talk to Stacey.

5.11 Plaintiff told Eric his side of the story and Eric told Plaintiff after our conversation that it's Defendants policy to send both parties home until they investigate, so Plaintiff left the premises.

5.12 On Tuesday, November 7 Plaintiff received a call from HR asking him to come in for a hearing. Plaintiff went to the hearing and told them again his side of the story. Plaintiff was told after the hearing they would call him with their decision.

5.13 On Friday, November 10th Plaintiff received a call from HR stating they decided to terminate Plaintiff. Plaintiff was confused as to why because he did nothing wrong. Plaintiff was not the aggressor.

5.14 Plaintiff was never written up nor had any disciplinary problems.

5.15 Jason had been written up several times for different reasons including harassment and other behaviors. Jason was not fired.

VI.

FIRST COUNT

DISCRIMINATION BASED ON RACE, HARASSMENT, AND HOSTILE ENVIRONMENT

6.01 The foregoing paragraphs of this Petition are incorporated in this Count as fully as if set forth at length herein.

6.02 Plaintiff was harassed on at his workplace and subjected to a hostile environment. As set forth in the Background Facts, *supra*, Plaintiff was discriminated against based upon his race. Plaintiff was harassed constantly in the workplace, which created a hostile environment.

6.03 The conduct engaged in by Defendant toward Plaintiff was based on discrimination and harassment as motivating factors. The discrimination, retaliation and harassment created a hostile environment in which Plaintiff had to work.

6.05 Such discrimination by Defendant against Plaintiff was intentional. Accordingly, Plaintiff is entitled to recover damages from Defendant for back pay, front pay, benefits, future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life, other nonpecuniary losses, and compensatory damages. Further, this discrimination was willful so Plaintiff is entitled to recover exemplary damages. Plaintiff is also entitled to recover all costs of Court and attorneys' fees and expert fees.

VII.

JURY TRIAL DEMAND

7.01 PLAINTIFF DEMANDS A TRIAL BY JURY.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant Amazon DFW9 be cited to appear and answer herein, and that on final trial, Plaintiff have and recover the following relief against Defendant:

1. Judgment against Defendant for compensatory damages in an amount in excess of the minimum jurisdictional limit of this Court, past and future lost earnings, past and future damages to earnings capacity, direct and indirect damages, incidental and consequential damages, and related damages;
2. Exemplary damages in an amount to be determined by the trier of fact;
3. Prejudgment and post-judgment interest at the maximum amount allowed by law;
4. All costs of Court; and
5. Such other and further relief to which Plaintiff may be justly entitled.

Dated: This 28th day of September, 2018.

Respectfully submitted,

KILGORE & KILGORE, PLLC

By: *W. D. Masterson*

W.D. MASTERSON
State Bar No. 13184000

3109 Carlisle
Dallas, TX 75204-2471
(214) 969-9099 - Telephone
(214) 953-0133 - Fax
wdm@kilgorelaw.com

ATTORNEYS FOR PLAINTIFF
STACEY SMITH

EXHIBIT A

Texas Workforce Commission

A Member of Texas Workforce Solutions

September 17, 2018

NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION

Stacey Smith
c/o W.D. Masterson
Kilgore & Kilgore PLLC
3109 Carlisle Street
Dallas, TX 75204

Re: ***Stacey Smith v. Amazon DFW9***
EEOC Complaint # 450-2018-01799

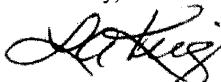
Dear Stacey Smith:

The above-referenced case was processed by the United States Equal Employment Opportunity Commission or a local agency. Pursuant to Sections 21.252 and 21.254 of the Texas Labor Code, this notice is to advise you of your right to bring a private civil action in state court in the above-referenced case. **YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION.**

If your case has been successfully resolved by the U. S. Equal Employment Opportunity Commission or another agency through a voluntary settlement or conciliation agreement, you may be prohibited by the terms of such an agreement from filing a private civil action in state court pursuant to the Texas Commission on Human Rights Act, as amended.

The United States Supreme Court has held in *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under Chapter 21 of the Texas Labor Code. Therefore, filing a lawsuit in state court based on the issuance of this notice of right to file a civil action may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - *et seq.*

Sincerely,



Lowell A. Keig
Director, Civil Rights Division

RETAIN ENVELOPE TO VERIFY DATE RECEIVED

Copy to:
Little Mendelson, P.C.
c/o: Danielle Mehallo
2301 McGee Street
8th Floor
Kansas City, MO 64108

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

**To: AMAZON DFW9
BY SERVING REGISTERED AGENT CORPORATION SERVICE COMPANY
211 E 7TH STREET SUITE 620
AUSTIN TX 78701**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **44th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **STACEY SMITH**

Filed in said Court **28th day of September, 2018** against

AMAZON DFW9

For Suit, said suit being numbered **DC-18-14781**, the nature of which demand is as follows:
Suit on **EMPLOYMENT** etc. as shown on said petition **REQUEST FOR DISCLOSURES**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 1st day of October, 2018.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By *Gay Lane*, Deputy

GAY LANE



ESERVE

CITATION

DC-18-14781

**STACEY SMITH
VS.
AMAZON DFW9**

**ISSUED THIS
1st day of October, 2018**

**FELICIA PITRE
Clerk District Courts,
Dallas County, Texas**

By: GAY LANE, Deputy

**Attorney for Plaintiff
W.D. MASTERSON
KILGORE & KILGORE PLLC
3109 CARLISLE
SUITE 200
DALLAS TX 75204
214-969-9099**

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-18-14781

Court No.44th District Court

STYLE: STACEY SMITH

VS.

AMAZON DFW9

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____.M. Executed at _____,
within the County of _____ at _____ o'clock _____.M. on the _____ day of _____,
20_____, by delivering to the within named

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,
to certify which witness my hand and seal of office.

Notary Public _____ County _____

RECEIVED

OCT 8 2018

© 4:00 PM

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

**To: AMAZON DFW9
BY SERVING REGISTERED AGENT CORPORATION SERVICE COMPANY
211 E 7TH STREET SUITE 620
AUSTIN TX 78701**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 44th District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **STACEY SMITH**

Filed in said Court **28th day of September, 2018** against

AMAZON DFW9

For Suit, said suit being numbered **DC-18-14781**, the nature of which demand is as follows:
Suit on **EMPLOYMENT** etc. as shown on said petition **REQUEST FOR DISCLOSURES**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 1st day of October, 2018.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By *Gay Lane*, Deputy

GAY LANE

RETURN / AFFIDAVIT
PROOF - ATTACHED



FILED
DALLAS COUNTY
10/12/2018 4:59 PM
FELICIA PITRE
DISTRICT CLERK

Kari Malone

ESERVE

CITATION

DC-18-14781

**STACEY SMITH
VS.
AMAZON DFW9**

**ISSUED THIS
1st day of October, 2018**

**FELICIA PITRE
Clerk District Courts,
Dallas County, Texas**

By: GAY LANE, Deputy

**Attorney for Plaintiff
W.D. MASTERSON
KILGORE & KILGORE PLLC
3109 CARLISLE
SUITE 200
DALLAS TX 75204
214-969-9099**

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-18-14781

Court No.44th District Court

STYLE: STACEY SMITH

VS.

AMAZON DFW9

Came to hand on the 8th day of OCT, 20 18, at 4⁰⁰ o'clock P. M. Executed at _____,
within the County of _____ at _____ o'clock _____. M. on the _____ day of _____,
20 _____, by delivering to the within named

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by
me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand

TURN AND DAIRY
PROOF - ATTACHED

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20 _____.
to certify which witness my hand and seal of office.

Notary Public _____ County _____

AFFIDAVIT OF SERVICE

State of Texas

County of Dallas

44th Judicial District Court

Case Number: DC-18-14781

**Plaintiff:
STACEY SMITH**

vs.

**Defendant:
AMAZON DFW9**

Received these papers on the 8th day of October, 2018 at 4:00 pm to be served on **AMAZON DFW9 care of its Registered Agent, CORPORATION SERVICE COMPANY, 211 E. 7th Street, Suite 620, Austin, Travis County, TX 78701**.

I, Thomas R. Kroll, being duly sworn, depose and say that on the 9th day of October, 2018 at 1:15 pm, I:

delivered to **AMAZON DFW9** a true copy of this **Citation together with Plaintiff's Original Petition and Exhibit "A"**, by delivering to its Registered Agent, **CORPORATION SERVICE COMPANY**, by and through its designated agent, **ADAM WAYS**, at the address of: **211 E. 7th Street, Suite 620, Austin, Travis County, TX 78701**, having first endorsed upon such copy of such process the date of delivery.

I certify that I am approved by the Supreme Court of Texas, Misc. Docket No. 05-9122 under rule 103, 501, and 501.2 of the TRCP to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas. I am competent to make this oath; I am not less than 18 years of age, I am not a party to the above-referenced cause, I have not been convicted of a felony or a crime of moral turpitude, and I am not interested in the outcome of the above-referenced cause.

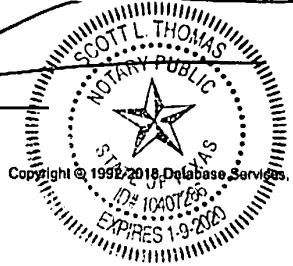
Subscribed and Sworn to before me on the 9th day of October, 2018 by the affiant who is personally known to me.

NOTARY PUBLIC



Thomas R. Kroll
PSC - 3012, Exp. 8/31/2019

Our Job Serial Number: THP-2018002259
Ref: 2810327



NO. DC-18-14781

STACEY SMITH,	§ IN THE DISTRICT COURT
Plaintiff,	§
v.	§
AMAZON DFW 9,	§ DALLAS COUNTY, TEXAS
Defendant.	§
	§ 144th JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

Defendant Amazon.com.kydc LLC (“Defendant”), improperly named as Amazon DFW 9¹, hereby files this Original Answer to Plaintiff’s Original Petition (the “Petition”):

I.**General Denial**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies the allegations in Plaintiff’s Petition and demands strict proof thereof, as required by Texas law.

II.**Affirmative and Other Defenses**

The affirmative and other defenses asserted herein are based on Defendant’s knowledge, information, and belief at this time. Defendant specifically reserves the right to modify, amend, or supplement any defense contained herein at any time. Subject to and without waiving any prior objections, answers or defenses, and without accepting any burden of proof on the matter, Defendant alleges the following separate defenses to the Petition:

¹ Amazon DFW 9 is the name of the building at which Plaintiff was employed; it is not a standalone legal entity. Defendant was Plaintiff’s employer at all relevant times.

1. Plaintiff's claims are barred by the applicable statutes of limitations to the extent any of his claims accrued and/or are based on conduct that occurred prior to the applicable limitations periods.
2. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff's allegations exceed the scope of any administrative charge he may have filed.
3. Plaintiff had a duty to take reasonable steps to mitigate and/or avoid his damages. To the extent that Plaintiff failed to take such steps, he is barred in whole or in part from recovering damages in this action, if any.
4. If Defendant is found to have violated any statute alleged in the Petition, Defendant acted at all times on the bases of a good faith and reasonable belief that it had complied fully with the law. Defendant's conduct was not willful, knowing, or intentional. Defendant did not engage in any action with malice or reckless indifference to the rights of Plaintiff.
5. Plaintiff's claims for compensatory and exemplary damages are subject to all applicable statutory caps and limitations under applicable law.
6. All employment actions taken by Defendant were based on legitimate, non-discriminatory, non-retaliatory business reasons and would have been made regardless of any alleged protected status or activity by Plaintiff.
7. To the extent discrimination was a motivating factor in the employment decisions affecting Plaintiff's employment, which Defendant denies, legitimate reasons standing alone would have induced and resulted in the same decisions relative to Plaintiff's employment.
8. Plaintiff's Petition, and each cause of action therein, is barred in whole or in part because Defendant exercised reasonable care to prevent and promptly correct any harassing or discriminatory behavior of which it had notice.

9. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant.

10. Defendant reserves the right to amend and plead other and further defenses that become known through the course of litigation.

WHEREFORE, Defendant Amazon.com.kydc LLC prays that the Court dismiss the suit with prejudice, render judgment that Plaintiff take nothing, assess costs against Plaintiff, and award Defendant all other relief to which it may be justly entitled.

Date: November 1, 2018

Respectfully submitted,

/s/ Paulo B. McKeeby _____

Paulo B. McKeeby
TX State Bar No. 00784571
Aimee M. Raimer
TX State Bar No. 24081275
MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, TX 75201
Tel: 214-466-4000
Fax: 214-466-4001
paulo.mckeeby@morganlewis.com
aimee.raimer@morganlewis.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served upon all counsel of record via the Court's ProDoc eFiling 2 System on this 1st day of November, 2018, as follows:

W.D. Masterson
Kilgore & Kilgore, PLLC
3109 Carlisle
Dallas, TX 75201-2471
wdm@kilgorelaw.com

/s/ Paulo B. McKeeby _____

Paulo B. McKeeby

B

Case Information

DC-18-14781 | Stacey Smith vs. Amazon DFW9

Case Number	Court	Judicial Officer
DC-18-14781	44th District Court	GOLDSTEIN, BONNIE LEE
File Date	Case Type	Case Status
09/28/2018	EMPLOYMENT	OPEN

Party

PLAINTIFF
Smith, Stacey

Active Attorneys▼
Lead Attorney
MASTERSON, W.D.
Retained

Work Phone
214-969-9099 

Fax Phone
214-953-0133 

DEFENDANT
Amazon DFW9

Address
BY SERVING REGISTERED AGENT
CORPORATION SERVICE COMPANY
211 E 7TH STREET SUITE 620
AUSTIN TX 78701

Active Attorneys▼
Lead Attorney
MCKEEBY, PAULO
BYRON
Retained

Work Phone
214-466-4000 

Fax Phone
214-466-4001 

B

Events and Hearings

09/28/2018 NEW CASE FILED (OCA) - CIVIL

09/28/2018 ORIGINAL PETITION ▾

PETITION

09/28/2018 JURY DEMAND

09/28/2018 ISSUE CITATION ▾

ISSUE CITATION

10/01/2018 CITATION ▾

Anticipated Server
ESERVE

Anticipated Method
Actual Server
PRIVATE PROCESS SERVER

Returned
10/12/2018
Comment
ES/ 27936599/ GDL

10/12/2018 RETURN OF SERVICE ▾

CITATION - AMAZON DFW9

Comment
CITATION - AMAZON DFW9

10/17/2018 NOTE - ADMINISTRATOR ▾

Comment
ANSWER DUE 11/5/18

11/01/2018 ORIGINAL ANSWER - GENERAL DENIAL ▾

answer to file 11-01-18.pdf

B

Financial

Smith, Stacey

Total Financial Assessment	\$340.00
Total Payments and Credits	\$340.00

10/1/2018 Transaction \$340.00

Assessment

10/1/2018 CREDIT CARD Receipt # Smith, (\$340.00)
- TEXFILE (DC) 64998- Stacey
2018-DCLK

Documents

PETITION
ISSUE CITATION
CITATION - AMAZON DFW9
answer to file 11-01-18.pdf

B